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# FAX TRANSMISSION

Region 10 Superfund  
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Date 2/1/10Initial for T. Y. W. H. L.**OFFICE OF THE ATTORNEY GENERAL**1118 IRONWOOD DRIVE  
COEUR D'ALENE, IDAHO 83814

Fax: 208-666-6777

To: Thomas E. Greenland, Esq.

Date: January 13, 1999

Fax #: 402-271-5610

Pages: 5, including this cover sheet.

From: Curt Fransen *CAF*

Subject: Agreement in Principle Terms

**COMMENTS:**

A faxed copy of the Governments' signed letter setting out the acceptable general terms of an Agreement in Principle is attached. The original is being mailed to you.

The letter reflects your proposed resolution to the "equipment" issue by changing the Trail O&M mount to \$2.6 million and dropping any further reference to equipment. The State and Tribe discussed your proposal and recognize the good faith attempts by Union Pacific to meet our needs. We realize we will all have to resolve a great many issues before a final settlement can be consummated and wish to continue our good relationship toward that end.

Other than minor typographical corrections, the only changes to the letter from the previous draft reviewed by the Parties are the addition of the phrase "to good operating condition" in the sentence regarding the bridges in Item 3 and the addition of the last sentence to Item 7. The first addition was made upon the request of the Tribe and I believe it is simply consistent with the overall understanding of the Parties that the trail and its features as repaired/constructed/converted by Union Pacific will be in good operating condition when the State/Tribe operating entity assumes routine operation and maintenance responsibilities. The second addition was made upon the request of DOJ to note, as I believe the Parties understand, that the environmental release (for cleanup/response costs) will not include the Wallace Yard, the Canyon Creek spur and active portions of Plummer Junction.

If you have any questions or concerns, please call Tom S., Howard or myself as appropriate. We look forward to your approval. Tom Swegle reports that he is well along in pulling together the final Agreement in Principle.

USEPA SF



1142911

January 13, 1999

Thomas E. Greenland, Esq.  
Law Department  
Union Pacific Railroad Company  
1416 Dodge Street Room 830  
Omaha, Nebraska 68179-001

**RE: Coeur d' Alene Settlement Negotiations: Agreement in Principle**

Dear Tom:

This letter follows your letter of December 18, 1998 and our telephone conversation on January 5, 1999 and is intended to reflect the terms of an Agreement in Principle which the undersigned counsel believe represent key terms of a settlement of United States, State of Idaho and Coeur d' Alene Tribe (Governments) claims against Union Pacific in the Coeur d' Alene Basin. The Parties to this negotiation have labored in good faith and at length through various offers, counteroffers, meetings, conference calls and technical documents. This letter is intended to propose the terms of an Agreement in Principle with the recognition that not all aspects of our mutual understandings are, or can be, fully delineated at this time. Continued good faith dealings will be necessary to successfully proceed through the several steps that remain to reach a final settlement, including public comment and response processes, Surface Transportation Board coordination, completion of technical documents and final negotiation and approval of a Consent Decree by appropriate Government officials. Therefore an Agreement in Principle between the Parties will be nonenforceable and nonbinding but will allow the Parties to proceed with express mutual understandings.

The proposed terms set out below are generally ordered in accordance with the components addressed by Tom Greenland's letters dated November 4, 1998 and the response of the Government's dated December 3, 1998 as well as Tom Greenland's letter of December 18, 1998 and the verbal response of the Governments in the January 5, 1999 conference call. Where representations in these letters indicate the Parties are in agreement, the below terms reference and incorporate those understandings.

**1. Response Action Obligations**

Union Pacific will implement a Response Action involving removals, capping, and institutional controls consistent with CERCLA requirements and procedures as reflected by the November 4, 1998 letter as clarified by the December 3, 1998 letter. The Parties' technical representatives are in the process of completing detailed design documents and specifications for the Response Action which will be incorporated into the final Consent Decree. Union Pacific will provide funding for Government oversight of Response Action implementation in accordance with an oversight plan to be agreed upon by the Parties.

Thomas E. Greenland, Esq.

Page 2

January 13, 1999

## 2. Disposal Site

The Central Impoundment Area and Slag Pile area within the Bunker Hill Superfund Site will be available to Union Pacific through September 1, 1999 and September 1, 2000, respectively, for the placement of materials removed from the Mullen-Plummer Right of Way as part of the Response Action. In the event these locations are generally made available for the placement of materials from the Coeur d'Alene Basin beyond these dates, they will also be made available to Union Pacific. Union Pacific will be responsible for any additional incremental costs associated with placement of Union Pacific materials at these locations. The availability of these areas is subject to the conditions recognized in the November 4, 1998 and December 3, 1998 letters.

## 3. Response Action/Trail Operation and Maintenance (O&M)

### a. Response Action O&M

Union Pacific will provide O&M of the response actions and repair of catastrophic flood damage for a period of 30 years in accordance with an O&M Plan to be completed by the parties for incorporation into the final Consent Decree. The general elements of the O&M Plan are outlined by the November 4, 1998 letter as clarified by the December 4, 1998 letter. Response Action O&M and repair of catastrophic flood damage beyond 30 years will be addressed by Union Pacific, consistent with the proposal of the December 18, 1998 letter, by funding an escrow account in the amount of \$100,000 per year for five years. An evaluation of the adequacy of the escrow account shall be undertaken by the Parties after an appropriate period of time such as ten years. If the Parties are unable to agree whether the escrow account is adequate to fund Response Action O&M and catastrophic flood damage repair after 30 years, Union Pacific will retain such obligations. The Governments will agree to non-enforceable language in the Consent Decree or O&M Plan, as appropriate, stating that the State/Tribal trail operating entity(s) (STT) will consider the availability of, and seek, additional funding sources to assist Union Pacific in meeting its long term O&M and catastrophic repair obligations. Union Pacific will provide funding for Governments' oversight of these long term obligations by annual and event triggered inspections as provided in an oversight plan to be agreed upon by the Parties and incorporated into the Consent Decree. EPA five year reviews of the Response Action will also be funded by Union Pacific.

Thomas E. Greenland, Esq.

Page 3

January 13, 1999

#### B. Trail O&M

Union Pacific will pay \$2,600,000 to the STT to be used for Trail O&M. The payment is to be made within a short period of time (90 days for example) after entry of the Consent Decree. In general, Trail O&M activities include those elements referenced and identified by the November 4, 1998 letter with the exception of relocation of access barriers as provided by the December 3, 1998 letter. O&M of bridges will be Trail O&M activities after repair and outfitting of the bridges by Union Pacific to good operating condition for trail use. The Parties will work together to ensure that the approved ISTEA funding in the amount of \$1,000,000 is applied to the construction of the trail.

#### 4. Natural Resource Damage (NRD) Settlement

In addition to other agreed actions and payments, Union Pacific will pay \$2,000,000 for a release of NRD claims against Union Pacific regarding the inactive Mullen-Plummer Right of Way and associated inactive spurs within the Coeur d'Alene Basin that have been or could be brought by the Coeur d'Alene Tribe, the State of Idaho or the United States. The release will be subject to reopeners similar to those in the federal government's model RD/RA Consent Decree. The payment is to be made within a reasonably short period of time (90 days for example) after entry of the Consent Decree.

#### 5. Trail Amenities

Union Pacific will provide trail amenities as described by the November 4, 1998 letter, except as provided by the December 3, 1998 letter, the exact number of amenities such as highway signs, bollards, fencing, flashers, and the like will be determined by applicable safety and operational requirements. Union Pacific will pay the STT \$100,000 for the upgrade of existing facilities or other trail uses as the STT may determine.

#### 6. Past and Future Costs

Union Pacific will pay the documented past costs of the United States as described in the December 3, 1998 letter. Union Pacific will continue to pay the documented costs of State of Idaho and Coeur d'Alene Tribe incurred through entry of the Consent Decree. Union Pacific will pay future costs, including oversight costs related to implementation and long-term O&M of the Response Action, in accordance with an oversight plan to be agreed upon by the Parties and incorporated into the Consent Decree.

Thomas E. Greenland, Esq.  
Page 4  
January 13, 1999

#### 7. Scope of the Environmental Release

Environmental releases will be provided in the Consent Decree with specific exclusions and reservations consistent with the representations of the November 4, 1998 and December 3, 1998 letters. As the Parties have discussed, the Governments will reserve their claims for response costs relating to the Canyon Creek spur line, the Wallace Yard, and areas of the Plummer Junction as described in the December 3, 1998 letter.

A final item, as discussed during our January 5, 1999 conference call, is that the Consent Decree will include a provision stating that Union Pacific will indemnify the Governments for any taking claims, the terms of which require further discussion between the Parties.

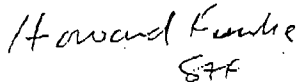
The Governments believe the above items constitute the terms of an Agreement in Principle to which the Parties can agree. As has been recognized in previous correspondence, the Agreement in Principle between the Parties cannot address, or fully address, every issue that has, or may, arise in these complex negotiations. Further clarification and additional detail necessary for a final settlement between the Parties will come from the public input, the response action design process and the final negotiation and drafting of technical documents and the Consent Decree. No final decisions on response action alternatives can be made until completion of public participation requirements. Continued good faith efforts and cooperation of the Parties will be critical in proceeding through the significant remaining administrative procedures, technical issues and legal processes necessary to reach a final settlement.

The Governments request your review of the above proposed terms and, if acceptable, written confirmation that these terms describe an Agreement in Principle which Union Pacific is prepared to enter. If Union Pacific is in agreement with these terms, a final Agreement in Principle will be prepared by Tom Swegle for the Parties review and approval. The final Agreement in Principle will expressly merge the terms of this letter and the appropriate portions of previous letters as referenced herein.

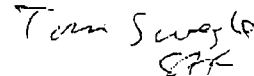
Sincerely,



Curt Fransen  
For the State of Idaho



Howard Funke  
For the Coeur d'Alene Tribe



Tom Swegle  
For the United States

UNION PACIFIC RAILROAD COMPANY

1416 DODGE STREET  
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OMAHA, NEBRASKA 68179-0001  
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January 14, 1999

**FACSIMILE AND U.S. MAIL**

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Environmental and Natural Resources Division  
1425 New York Avenue, N.W.  
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Mr. Curt Fransen     **FAX: 208-666-6777**  
Deputy Attorney General  
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Coeur d'Alene, ID 83815

Mr. Howard Funke     **FAX: 208-667-4695**  
Givens & Funke  
424 Sherman Avenue - Suite 308  
Coeur d'Alene, ID 83816-0969

Re:    Wallace Branch - Agreement in Principle

Gentlemen:

This responds to your letter of January 13, 1998, which sets forth the general terms of an agreement in principle which we have discussed.

This is to confirm that the terms set forth in your January 13 letter reflect Union Pacific's understanding of the agreement in principle. It is our understanding that the terms of the agreement in principle are to be further defined in a single document currently being drafted by Tom Swegle, but that pending negotiation of that agreement, your letter of January 13 and this response shall serve as an agreement in principle which will permit the parties, including EPA to proceed on the schedule we have discussed.

Very truly yours,

Thomas E. Greenland  
Environmental Counsel  
Tel: (402) 271-4634  
Fax: (402) 271-7101



cc: Cliff Villa - FAX: 206-553-0163

TEG:sla